

GUIDE

What Does the Supreme Court's Affirmative Action Decision Mean for Corporations?

What To Do Now While Considering Long-Term Implications

Affirmative Action and the Supreme Court

What The Decision Means for Corporations

Importance of Affirmative Action for DEI

What's at Stake for Corporate America with Affirmative Action Overturned:

- **Dismantling of Diverse Talent Pipelines:** It will be much harder for companies to foster a diverse workplace if the colleges and universities they recruit from are not diverse themselves.
- **Chilling Effect on Efforts to Hire People of Color:** The use of affirmative action in colleges and universities has promoted the use of best practices in the workplace.
- **Potential Loss of Profits:** Companies that perform better at DEI consistently outperform their counterparts.

On June 29, the U.S. Supreme Court issued a [joint decision](#) in two cases related to affirmative action in higher education (ruling 6-3 against the University of North Carolina and 6-2 against Harvard University)¹ that colleges and universities can no longer use race as a factor in admissions. The cases were brought forth by a conservative student group [challenging](#) the use of race in admissions at Harvard University and the University of North Carolina. While the constitutionality of the use of affirmative action in the college admissions process has been affirmed by the Supreme Court in a series of decisions beginning in 1978 and as recently as 2016, the most recent decision restricting the consideration of race overturns decades of precedent and opens the door for potential impact beyond higher education.

The use of affirmative action in colleges and universities has contributed to expanding efforts to hire and promote people of color in the workplace through practices such as talent pipeline development and diverse slates. Corporate America has a well-documented history of speaking out in support of affirmative action when it has been deliberated by the Supreme Court. In 2003, 20 companies signed on to an amicus brief supporting affirmative action in the *Grutter v. Bollinger* case. In 2016, the number of companies speaking out in support grew to 45 for *Fisher v. Texas II*. In 2023, more than [80 companies](#) filed and/or signed onto amicus briefs advocating for affirmative action to be upheld in this most recent case underlining its foundational role in meeting business and customer needs. This remains a critical issue for corporations as they rely on diverse student bodies at universities where they recruit to ensure diversity in the workplace.

Just as *Brown v. Board of Education* resulted in the desegregation of more than just public schools, [legal experts say](#), this affirmative action decision is bound to set a new precedent that calls into question areas where laws or policies protect, boost or deny people based on racial representation. [According to DEI and legal experts](#), fostering DEI in the workplace will become significantly more difficult now that affirmative action is overturned. A [2013 Harvard University study](#) found that U.S. states that eliminated affirmative-action hiring requirements have seen a significant decrease in workplace diversity compared to the states that kept affirmative-action programs. Further, the decision will likely invite greater scrutiny of the strategies companies use

1) Justice Ketanji Brown Jackson recused herself from the case involving Harvard University.

to increase diversity, [according to Andrew Turnbull](#), a labor and employment partner at law firm Morrison & Foerster.

Some organizations have already begun to apply the discriminatory argument to U.S. companies before this most recent decision. America First Legal has filed [complaints](#) with the Equal Employment Opportunity Commission and requested an investigation into the hiring practices of companies such as BlackRock, Morgan Stanley, McDonald's, Starbucks, Twilio, Hershey and Kontoor Brands. In a [recent interview with Axios](#), Valerie Capers Workman, chief legal officer for recruiting platform Handshake, noted "[Companies] should expect some litigation as an outcome based on what we think may happen. That doesn't mean that the litigation will have merit, but it does mean that companies will probably have to spend some money defending claims that they otherwise would not have." Similarly, in [a recent Bloomberg article](#) preceding the decision Daniel Pyne III, an employment specialist at law firm Hopkins & Carley, said if the court strikes down race-conscious admissions in education, "that is a strong hint that the same decision might be made [in employment cases]."

What Should Companies Do Now?

Corporate DEI leaders can strengthen relationships with in-house counsel and in some cases external counsel to ensure proper interpretation of the Supreme Court's decision and subsequently any policies related to it (e.g., compensation connected to meeting DEI goals).

They can also decide if they want to make a statement, based on their corporate values. To determine that, we recommend the following:

- Review your organization's mission, values, and commitment to DEI for guidance.
- Seek support from both internal and external resources such as your legal counsel, crisis communications, DEI team, and other executive stakeholders.
- Continue to demonstrate and show evidence of DEI's impact on specific business outcomes within your organization.

Furthermore, DEI leaders can continue outlining the business impact of setting strong commitments for underrepresented talent. A negative impact of DEI in the workplace has the potential to jeopardize company profits, according to McKinsey & Company's 2020 "[Diversity Wins](#)" report. The most diverse companies are more likely to financially outperform their counterparts that do not have diverse representation. In 2019, companies in the top quartile for racial and ethnic diversity outperformed those in the lower quartile by 36 percent in profitability.

Where to Learn More

To learn more about the potential corporate impact of the Supreme Court's decision on affirmative action, Seramount's Employee Voice Session on July 17th at 1:00 p.m. (ET) will review the decision and offer relevant support for Chief Diversity Officers and senior leaders. To register and find our more information, please contact your Relationship Director.